A **BANK BUMIPUTRA MALAYSIA BHD & ORS**

v.

SAFUAN HOLDINGS SDN BHD & ORS; ALLIED BANK MALAYSIA BHD (INTERVENER)

B

HIGH COURT MALAYA, KUALA LUMPUR
NALLINI PATHMANATHAN JC
[EXECUTION NO: 36-16-2004]
2 OCTOBER 2009

C

CIVIL PROCEDURE: *Execution - Prohibitory order - Whether prohibitory order should be set aside - Whether an equitable interest arose in favour of purchaser - Whether a valid and equitable charge created in favour of applicant-intervenor - Whether purchaser acquired rights and*
D *property in Lot 363A on the date of execution of the sale and purchase agreement - Whether second defendant divested completely of his beneficial ownership in Lot 363A and beneficial ownership of the land*

CIVIL PROCEDURE: *Execution - Judgment debt - Interest - Plaintiffs*
E *claiming interest for a period of more than six years in respect of the judgment debt - Whether contravening s. 6(3) of the Limitation Act 1953 - Whether court has power to amend prohibitory order and the writ of seizure and sale and limit the interest to six years - Whether necessary to set aside prohibitory order*

F The plaintiffs entered into a consent judgment dated 4 February 1991 with the second defendant ('D2'). The plaintiffs obtained leave to execute the judgment as six years had lapsed. On 21 November 2003, D2 entered into an agreement with one Mohd Faizal bin Matshah ('Faizal') for the sale of D2's property known as HSD
G 97434 Lot No. 363A, Seksyen 41A Daerah Kuala Lumpur ('Lot 363A') and another piece of land known as Lot 363B. Allied Bank Malaysia Berhad, the applicant-intervenor granted a loan to Faizal to finance the purchase of Lots 363A and 363B and the land was to be charged to it as security. The plaintiffs applied for and obtained
H the prohibitory order over Lot 363A which was registered on 10 November 2004. D2 executed a memorandum of transfer in respect of Lot 363A and 363B on 23 December 2004 in favour of Faizal. Faizal executed a charge in favour of the applicant-intervenor. Faizal's solicitors delivered the original title, discharge of charge and
I duplicate charge to the applicant-intervenor's solicitors. The full purchase price was paid on 23 February 2005 and the memorandum of transfer was executed on 23 December 2004. On 19 April 2006,

the plaintiffs filed a summons for direction in the present proceedings for an order to sell Lot 363A which has yet to be disposed of. On 6 June 2006, the applicant-intervenor discovered the prohibitory order registered against Lot 363A. The applicant-intervenor was not allowed to register its charge. The applicant-intervenor filed this application to intervene in these proceedings and set aside the prohibitory order.

Held (dismissing the applicant-intervenor's application with costs):

(1) D2 would have been effectually divested of his beneficial ownership of Lot 363A upon full payment of the purchase price and execution of the memorandum of transfer. However, the prohibitory order was registered on 10 November 2004, prior to full payment of the purchase price and execution of the memorandum of transfer. Thus as of 10 November 2004, D2 was precluded from further dealing with Lot 363A, by reason of the joint effect of s. 336 of the National Land Code as well as the provisions of O. 47 r. 6(1) of the Rules of the High Court 1980. (paras 12 & 13)

(2) As of 10 November 2004, D2 had not been divested of his beneficial ownership of Lot 363A. D2 was not a bare trustee merely holding on to the title to the property for and on behalf of Faizal because the full purchase price had not been paid, and the memorandum of transfer had not been executed. As the prohibitory order was registered prior to the payment of the full purchase price and execution of the memorandum of transfer, D2, by virtue of the prohibitory order was precluded from dealing with the said property, including the transfer of that property to any other party. D2 remained the registered proprietor at the point in time when the prohibitory order was registered. As such Faizal had no interest in the land and could neither pass nor create an equitable charge in favour of the applicant-intervenor. The applicant-intervenor enjoyed no prior equitable rights precluding the plaintiffs from looking to Lot 363A to satisfy their judgment debt. This ground to set aside the prohibitory order was therefore without merit and failed. *Karuppiah Chettiar v. Subramaniam* (dist); *Lee Kuet Chin v. Garai Jelian; Tan Kok Sen (Intervener)* (dist). (paras 13, 14 & 15)

(3) As this case dealt with execution, leave of court was required where execution was done after six years. The court may properly limit the arrears of interest to be claimed. Here, arrears of interest should be limited to six years, as the judgment was executed after more than twelve years. The court ordered that the prohibitory order and the writ of seizure and sale be amended so as to limit the interest to six years. This in itself was not sufficient basis to set aside the prohibitory order altogether. The application to set aside the prohibitory order was therefore dismissed with costs. *Perwira Affin Bank Bhd v. Lim Ah Hee* (refd); *Lowsley and Another v. Forbes (t/a LE Design Services)* (refd). (paras 19 & 20)

Case(s) referred to:

Chua Hee Hung & Ors v. QBE Supreme Insurance Bhd [1990] 1 CLJ 669; [1990] 1 CLJ (Rep) 49 ***(refd)***

Karuppiah Chettiar v. Subramaniam [1971] 1 LNS 43 FC ***(dist)***

Lee Kuet Chin v. Garai Jelian; Tan Kok Sen (Intervener) [2006] 3 CLJ 711 CA ***(dist)***

Lowsley and Another v. Forbes (t/a LE Design Services) [1998] 3 All ER 898 ***(refd)***

Mahadevan Mahalingam v. Manilal & Sons (M) Sdn Bhd [1984] 1 CLJ 286; [1984] 1 CLJ (Rep) 230 FC ***(refd)***

Perwira Affin Bank Bhd v. Lim Ah Hee [2004] 2 CLJ 787 FC ***(refd)***

Legislation referred to:

Limitation Act 1953, s. 6(3)

National Land Code, ss. 206(3), 334, 336

Rules of the High Court 1980, O. 47 r. 6(1)

For the plaintiffs - Andrew Chiew; M/s Lee Hishamuddin

For the applicant/intervener - SM Chen; M/s Anad & Noraini

Reported by Susheila Sreedharan

JUDGMENT

Nallini Pathmanathan JC:

Introduction

[1] Allied Bank Malaysia Berhad ('the applicant-intervenor') seeks to set aside a prohibitory order obtained by the plaintiffs dated 4 November 2004 ('the prohibitory order') in respect of the second defendant, Mat @ Matshah Ahmad @ Sapuan's property known as HSD 97434 Lot No. 363A, Seksyen 41A Daerah Kuala Lumpur

('Lot 363A'). On 24 November 2008, the applicant-intervenor obtained an order permitting it to intervene in these proceedings. That order is the subject matter of an appeal in the Court of Appeal.

Brief Facts

[2] The salient facts relating to this application are best tabulated and are as follows:

4.2.1991	The Plaintiffs entered into a consent judgment with the second Defendant ('D2').
12.11.2003	The Plaintiffs obtained leave to execute the judgment out of time against the Defendants as 6 years had lapsed.
21.11.2003	D2 entered into an agreement with one Mohd Faizal bin Matshah ('Faizal') for the sale of Lot 363A as well as another piece of land known as Lot 363B. Faizal paid a sum of RM500,000 towards the purchase price of RM1.5 million.
17.3.2004	The Applicant-Intervenor granted a loan to Faizal to finance the purchase of Lots 363A and 363B. It was a condition precedent of the loan that Lots 363A and 363B would be charged to the Applicant-Intervenor as security.
4.11.2004	The Plaintiffs applied for and obtained the Prohibitory Order over Lot 363A.
10.11.2004	The Prohibitory Order was registered.
21.12.2004	The Applicant-Intervenor lodged a private caveat over Lot 363A.
23.12.2004	D2 executed a memorandum of transfer in respect of Lot 363A and 363B in favour of Faizal.
4.3.2005	Danaharta issued a redemption statement for RM800,000 in respect of Lot 363A to the Applicant-Intervenor.
21.3.2005	Faizal executed a charge in favour of the Applicant-Intervenor.

23.3.2005	The Applicant-Intervenor paid the sum of RM800,000 to D2's solicitors. The Applicant-Intervenor also requested for the Form 14A, discharge of charge, original issue document of title and duplicate charge.
9.3.2006	Faizal's solicitors delivered the original title, discharge of charge and duplicate charge to the solicitors for the Applicant-Intervenor.
19.4.2006	The Plaintiffs filed a Summons For Direction in the present proceedings for an order to sell Lot 363A which has yet to be disposed of.
30.5.2006	Danaharta forwarded the discharge of charge forms dated 22 March 2006.
6.6.2006	Applicant-Intervenor discovered the Prohibitory Order registered against Lot 363A on 4 November 2004 by the Plaintiffs. The Applicant-Intervenor was not allowed to register its charge.
14.6.2006	The Applicant-Intervenor filed this application to intervene in these proceedings and set aside the Prohibitory Order.

The plaintiffs have continued to apply to extend the lifespan of the prohibitory order for terms of six months each on expiry.

Applicant-Intervenor's Submission

[3] The applicant-intervenor submits that the prohibitory order ought to be set aside as the plaintiffs' interest does not prevail over the applicant-intervenor's equitable interest or rights as an equitable chargee. In support of this, s. 334 of the National Land Code is cited:

> In this Chapter "prohibitory order" means, where land or an interest in land held by a judgment-debtor is to be sold in execution proceedings, an order made pursuant to rules of court by a court of competent jurisdiction prohibiting the judgment-debtor from effecting any dealing therewith or from effecting such dealing therewith as may be specified in the order.

[4] Learned counsel for the applicant-intervenor, Ms SM Chen submits that therefore, the prohibitory order only prohibits any dealing with the land so that the *status quo* of the land can be maintained till the sale of the land. By reason of O. 47 r. 6 of the Rules of the High Court 1980 the applicant-intervenor further

submits that by reason of the prohibitory order, the applicant-intervenor could not present the transfer and registration of charge and discharge of charge at the relevant land office. Section 337 provides that no sale of and or interest for the purpose of satisfying any judgment debt shall become absolute until it has been confirmed by an order made pursuant to rules of court. The applicant-intervenor therefore submits that as the sale and purchase agreement between D2 and Faizal was executed on 21 November 2003, almost one year before the prohibitory order dated 4 November 2004, Faizal acquired an equitable interest over Lot 363A which was not lost by reason of the prohibitory order of 4 November 2004.

[5] The applicant-intervenor goes on to submit that although the MOT was duly executed subsequent to the prohibitory order on 23 December 2004 and the redemption sum paid on RM800,000 paid on 23 March 2005 and original title delivered on 9 March 2006, D2 had divested himself of all beneficial interest in Lot 363A as of the date of execution of the MOT. Once such interest had been divested the applicant-intervenor maintains that the plaintiffs as judgment creditors cannot look to the said Lot 363A to satisfy the monetary judgment they obtained. In essence the applicant-intervenor maintains that as D2 divested himself of all beneficial interest in the land as of the date of execution of the MOT, D2 had no further title of that date and therefore D2 has no interest in the said Lot 363A. Therefore the plaintiffs cannot sell the land as D2 has and had no interest in it from 23 March 2005. In support of this contention the applicant-intervenor relies on *Karuppiah Chettiar v. Subramaniam* [1971] 1 LNS 43; *Lee Kuet Chin v. Garai Jelian; Tan Kok Sen (Intervener)* [2006] 3 CLJ 711.

[6] The applicant-intervenor, on the other hand, maintains that it, unlike the plaintiffs, has an interest in the said Lot 363A, namely an equitable charge. Accordingly it is maintained that the court cannot make an order for sale in favour of the plaintiffs as this would adversely affect and prejudice the applicant-intervenor's rights gravely in view of the equitable charge it enjoys over the property.

Plaintiffs Submissions

[7] The plaintiffs, to the contrary, maintain that the prohibitory order ought not be set aside as no equitable charge exists in favour of the applicant-intervenor. They maintain that subsequent to the

registration of the prohibitory order on 10 November 2004 no equitable charge could arise under O. 47 r. 6(1), Rules of the High Court 1980. The plaintiffs submit that Faizal was not in a position to charge Lot 363A as part of an agreement to secure a debt through the debtor's land. This is because, firstly, Lot 363A was charged to Danaharta when the sale and purchase agreement between D2 and Faizal was executed. The land was then registered in D2's name. Secondly, the applicant-intervenor therefore knew or ought to have known that Lot 363A had to be transferred from D2 to Faizal upon completion of the sale and after the charge in favour of Danaharta had been discharged. Thirdly the sale had not been completed. Therefore relying on substantially the same authorities as the applicant-intervenor, the plaintiffs maintain that D2 did not divest any interest equitable or otherwise over Lot 363A to Faizal. No equitable charge arose.

The Position In Law

[8] The primary question for consideration here is whether or not an equitable interest arose in favour of Faizal at the material time, such that he created a valid and equitable charge in favour of the applicant-intervenor. The creation and existence of equitable charges, although not registered or conforming strictly to the provisions of the National Land Code are well-recognised.

[9] In *Mahadevan Mahalingam v. Manilal & Sons (M) Sdn Bhd* [1984] 1 CLJ 286; [1984] 1 CLJ (Rep) 230, the Federal Court dealt with the subject:

> ... Our land law does not recognize a mortgage if it means a mortgage in the sense of English land law whereby the legal estate, ie, ownership of the land is transferred to the mortgagee and what is left with the mortgagor is only an equitable right to redeem known as equity of redemption. But our land law certainly recognizes a mortgage in the sense of Torrens system, referred to by text written as Torrens Mortgage in which the mortgagor retains the legal ownership whilst the mortgagee acquires a statutory right to enforce his security. For the purpose of avoiding confusion, our National Land Code drops the word "mortgage" and uses the word "charge" in place of Torrens mortgage. Thus, when s. 21(1) of our Limitation Act speaks of a "mortgage", it must mean a charge as understood and provided for in Part Sixteen of our National Land Code ... That being the case, the words "other charge on land" in the section, in our view, must mean other types of encumbrances

to which the land is subjected. These could be an equitable charge or a lien, statutory or equitable which arises as a result of depositing a title deed with the lender.

The decision of the Privy Council in *Haji Abdul Rahman v. Mohamed Hassan (supra)* certainly does not prevent the creation of an equitable charge. In that case agreement to secure a debt by which the debtor transferred his land to the creditor and upon repayment the land would be transferred back to the debtor was held to be valueless as a transfer or burdening instrument, but was good as a contract. The right so created was not a legal right in the land but only a contractual right.

....

But the subsequent Land Code and the present National Land Code do not contain provisions similar to section 4 of the above-quoted Regulation, although the Codes make provisions as to how a charge or a lien could be created. *Examination of Court's decisions clearly shows that the Courts have resorted to equitable principles and consistently held that an agreement or an agreement to secure a debt in favour of the creditor in respect of the debtor's land creates an equitable charge giving rise to an equitable right in favour of the creditor, although no charge or lien within the provisions of the National Land Code or the previous Code is executed or created.* (see *Ngan Khong v. Bamah bt Pakah Hamin & Anor* [1935] FMS LR 81; *Arunasalam Chetty v. Teah Ah Poh Trading (supra)*; *Vailipuram Sivaguru v. Palaniappa Chetty* [1937] 6 MLJ (KR) 59 and *Mercantile Bank v. Official Assignee* [1939] MLJ 196. The basis of this ruling is the very raison d'etre of the Court's own existence and the imputed intention of the legislature. Torrell Ag CJ in *Arunasalam Chettty*'s case *(supra)* said:

> *... It is the duty of the Courts to do justice between parties and unless expressly prohibited by Statute law, to give effect to ordinary commercial transactions, such as the advance of money on the security of title deeds ...*
>
> ... but it is difficult to believe that it was the deliberate intention of the Kedah legislature by the mere omission to exclude the recognition of the principle of an equitable deposit.

These statements were supported by Whitley, AG (SS) who sat in the same case and said:

> **... the Courts will recognize equitable estates and rights except so far as they are precluded from doing so by the statutes.**

Raja Azlan Shah J (as he then was) reaffirmed this judicial attitude in *Mercantile Bank Ltd.* case *(supra)* when he said:

> **... unless there are express words in the Act, this Court is not precluded from giving effect to equitable rights existing between the parties ...**
>
> *There is, however no provision in the National Land code prohibiting the creation of equitable charges and liens. The code is silent as to the effect of securities which do not conform to the Code's charge or lien. Therefore equitable charge and liens are permissible under our land law. We, therefore, think that the words "or other charge on land" in section 2(1) of the Limitation Act must be construed to include equitable charges and liens as well ...* (emphasis added).

Does An Equitable Charge In Favour Of The Applicant-intervenor Intervenor Subsist?

[10] The next question that arises for consideration is whether the applicant-intervenor or Faizal enjoys an equitable charge over Lot 363A. In order to ascertain this it is necessary to examine the sequence of events tabulated above. It is evident that the sale and purchase agreement between D2 and Faizal was executed on 21 November 2003, well before the grant of the prohibitory order on 4 November 2004 and its registration on 10 November 2004. For the purposes of this application, it is 10 November 2004 date that is relevant because that is the date when the prohibitory order was registered.

[11] Can it be said that on the date of execution of the sale and purchase agreement, ie, 21 November 2003 the purchaser, Faizal acquired the rights and property in Lot 363A? As stated by Gopal Sri Ram JCA (as His Lordship then was) in *Lee Kuet Chin v. Garai Jelian; Tan Kok Sen (Intervener)* [2006] 3 CLJ 711:

> ... It is settled by high authority "... That the vendors, after receipt of the full purchase price and surrender of possession of the lands to the appellants (the purchasers) are the bare trustees for the appellants of the said land ..." per Ong Hock Sim FJ in *Temenggong Securities Ltd & Anor v. Registrar of Titles, Johore & Ors* [1974] 2 MLJ 45. Equally a vendor is regarded as having divested himself of all the beneficial interest in his land and vested it in the purchaser only at the time when the memorandum of transfer is executed and the purchase money is paid in full. See *Karuppaiah Chettiar v. Subramaniam* [1971] 2 MLJ 116. And once there has been a divesting of beneficial ownership by a registered proprietor his

creditor cannot look to his land for satisfaction of any money judgment that may have been obtained. That is why you find Ong CJ (Malaya) saying in *Karuppiah Chettiar v. Subramaniam* that:

> It is trite law that when the court orders the sale of a judgment debtor's property it cannot sell more than what the judgment debtor himself is entitled to sell … (emphasis added).

And in *Chua Hee Hung & Ors v. QBE Supreme Insurance Bhd* [1990] 1 CLJ 669; [1990] 1 CLJ (Rep) 49, the Supreme Court held that:

a. It is clear law that vendors on receipt of the full purchase price and surrender of possession of the lands to be purchased are deemed to be bare trustees for the purchaser.

b. It is also trite law that when the court orders the sale of a judgment debtor's property, it cannot sell more than what the judgment debtor himself is entitled to sell.

c. Neither a prohibitory order nor a caveat creates a legal interest in the land.

d. The appellants' failure to lodge private caveats to protect their beneficial interest in the lands does not advance the case of the respondents in as much as the prohibitory order could not overrule the beneficial interest of the appellants in the properties attached.

e. As the 2nd defendant had no beneficial interest in the said lands there was nothing which the respondent judgment creditor could legally seize and sell.

[12] On the facts of the instant case it needs to be ascertained at what point D2 was divested completely of his beneficial ownership in Lot 363A and as a consequence, when beneficial ownership of the land vested in Faizal. As of the date of the sale and purchase agreement on 21 November 2003, the applicant-intervenor argues that D2 was divested of such beneficial ownership, particularly as a payment of RM500,000 was said to have been paid. The plaintiffs contend that beneficial ownership of Lot 363A did not pass on the execution of the sale and purchase agreement on 21 November 2003.

It is evident from the foregoing case-law that D2 would have been effectually divested of his beneficial ownership of Lot 363A upon full payment of the purchase price and execution of the memorandum of transfer. The full purchase price was paid on 23 February 2005 and the memorandum of transfer was executed on 23 December 2004. However prior to both those dates, on 10 November 2004, the prohibitory order was registered.

[13] The effect of a prohibitory order is specified in s. 336 of the National Land Code and specifies that it prohibits the registration, endorsement or entry on the document of title of any instrument of dealing executed by or on behalf of the proprietor, subject to sub-ss. (2) and (3). Neither of those sub-sections are applicable here. As such, as of 10 November 2004, D2 was precluded from further dealing with Lot 363A, by reason of the joint effect of s. 336 of the National Land Code as well as the provisions of O. 47 r. 6(1) of the High Court Rules 1980.

It follows from the foregoing sequence of events that as of 10 November 2004, the date of registration of the prohibitory order, D2 had not been divested of his beneficial ownership of Lot 363A. D2 was not a bare trustee merely holding on to the title to the property for and on behalf of Faizal. This is because as of that date, the full purchase price had not been paid, and the memorandum of transfer had not been executed. As such title to Lot 363A remained with D2. If title remained with D2, it could not pass to Faizal after 10 November 2004 by reason of the prohibitory order.

[14] As title could not pass to Faizal he was not in a position to charge the property in consideration of the loan granted by the applicant-intervenor. In short, no equitable charge could be created by Faizal in favour of the applicant-intervenor as he could pass no better title than he himself possessed. And at that point in time he did not have or possess title to Lot 363A.

[15] The instant case is distinguishable from the cases of *Lee Kuet Chin v. Garai Jelian; Tan Kok Sen (Intervener) (supra)* as well as *Karuppaiah Chettiar v. Subramaniam (supra)* in that in those cases title to the disputed property had passed to the purchaser such that the vendor was merely a bare trustee. Having divested himself of all beneficial ownership in the land, his judgment creditors could not longer look to the property for satisfaction of the debt. In the instant case however, the facts of the case disclose that there was

no divesting of beneficial ownership by the time the prohibitory order was registered. As such D2 remained the proprietor of Lot 363A. Faizal could not therefore create any form of charge in favour of the applicant-intervenor and thus no such equitable charge subsists. As no equitable charge subsists in favour of the applicant-intervenor the contention that the applicant-intervenor takes prior to the plaintiffs must fail.

[16] Ms SM Chen sought to contend further that the provisions of s. 206(3) of the National Land Code were applicable. This section which deals with the need for proper instruments of dealing, duly registered stipulates:

> (3) Nothing in subsection (1) shall affect the contractual operation of any transaction relating to alienated land or any interest therein.

It was submitted that as such the sale and purchase transaction was not affected by the non registration of that transaction. This argument did not appear to deal with the problem in issue as outlined above, and did not possess merit either. It did not address the effect of the prohibitory order on the attempted dealings in Lot 363A by D2.

[17] It was further submitted that notwithstanding that the purchase price was paid subsequent to the registration of the prohibitory order, Faizal nonetheless enjoyed an equitable interest in the property. The court sought from learned counsel for the applicant-intervenor, authorities on this point, but was advised that there were none. The foregoing cases referred to above, deal with the issue comprehensively. In summary it appeared to this court that as the prohibitory order was registered prior to the payment of the full purchase price and execution of the memorandum of transfer, D2, by virtue of the prohibitory order was precluded from dealing with the said property, including the transfer of that property to any other party. D2 remained the registered proprietor at the point in time when the prohibitory order was registered because the full purchase price had not been paid, and the memorandum of transfer had not been executed. As such Faizal had no interest in the land and could neither pass nor create an equitable charge in favour of the applicant-intervenor. In these circumstances the applicant-intervenor enjoys no prior equitable rights precluding the plaintiffs from looking to Lot 363A to satisfy their judgment debt.

This ground to set aside the prohibitory order is therefore without merit and fails.

6.0. Interest

[18] The second point relied upon by learned counsel for the applicant-intervenor is that of interest. It was submitted that the plaintiffs are claiming interest for a period of more than six years in respect of the judgment debt, thereby contravening s. 6(3) of the Limitation Act 1953. Interest appears to have been claimed for more than thirteen years. This, the applicant-intervenor submitted was unlawful. The plaintiffs on the other hand contended that s. 6(3) is inapplicable in that the said section deals with an action on a judgment rather than execution. In any event it was submitted in the alternative that if s. 6(3) applies the court has power to amend the prohibitory order and the writ of seizure and sale and limit the interest to six years so that it would not be necessary to set aside the prohibitory order altogether.

[19] The relevant case on point would appear to be *Perwira Affin Bank Bhd v. Lim Ah Hee* [2004] 2 CLJ 787. In the course of discussing s. 6(3) and adjudicating that a 'bankruptcy proceeding' is an action upon a judgment within s. 6(3) of the Limitation Act (which is not relevant here), the Federal Court discussed the issue of interest beyond a period of six years in conjunction with the provisions of the Limitation Act 1953:

> Furthermore, we should look at the scheme of our Limitation Act 1953. Where, as has been pointed out, the limitation of action is six years, the provision is silent on the limitation period for claiming arrears of interest. The reason is clear: it is not necessary because it is automatically limited to six years. Where the limitation of action is twelve years as in s. 21 (and s. 6(3)), the limitation period for claiming arrears of interest is six years, (see Ernest Cheong *(supra)* for the meaning of "arrears of interest"). *So, the limitation period for claiming arrears of interest is consistent, ie, six years in all cases. The exception is execution proceedings. But first of all, it is "execution" not an "action". Secondly if execution is to be done after six years leave of court must be obtained. That perhaps, is the reason for the requirement of leave, leave may not be granted at all or it may be granted with condition attached, eg, the arrears of interest may be limited to six years also. On these grounds I am of the view that the whole subsection should be read together and not to be split to first and second limb and to read them disjunctively* ... (emphasis added).

[20] The instant case deals with execution and not an action upon a judgment. Notwithstanding this as stated above, there is a requirement for leave of court to be obtained where execution is done after six years. In such an instance the court may properly limit the arrears of interest to be claimed. In the instant case, arrears of interest should be limited to six years, as the judgment was executed after a lengthy period of more than twelve years. In the circumstances the court orders that the prohibitory order and the writ of seizure and sale be amended so as to limit the interest to six years (see *Lowsley and Another v. Forbes (t/a LE Design Services)* [1998] 3 All ER 898). However this in itself does not comprise sufficient basis to set aside the prohibitory order altogether. The application to set aside the prohibitory order is therefore dismissed with costs.